

JENNER & BLOCK LLP
Vincent E. Lazar
Angela Allen (*pro hac vice* pending)
353 North Clark Street
Chicago, Illinois 60654
(312) 222-9350

Carl Wedoff
Nicolas Keller
919 Third Avenue
New York, New York 10022
(212) 891-1600

Counsel for the Chapter 11 Trustee

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

FIRESTAR DIAMOND, INC., *et al.*

Debtors.¹

Chapter 11

No. 18-10509 (SHL)

(Jointly Administered)

RICHARD LEVIN, Chapter 11 Trustee of
FIRESTAR DIAMOND, INC., FANTASY, INC.,
and OLD AJ, INC. f/k/a A. JAFFE, INC.,

Plaintiff,

v.

NIRAV DEEPAK MODI, MIHIR BHANSALI,
and AJAY GANDHI,

Defendants.

Adv. Proc. No. 19-1102 (SHL)

**NOTICE OF PRESENTMENT OF CHAPTER 11 TRUSTEE'S
APPLICATION FOR ISSUANCE OF A LETTER OF
REQUEST FOR JUDICIAL ASSISTANCE IN SERVICE OF PROCESS**

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Firestar Diamond, Inc. (2729), Fantasy, Inc. (1673), and Old AJ, Inc. f/k/a A. Jaffe, Inc. (4756).

On Friday, April 12, 2019 (the “**Presentment Date**”) at 12:00 p.m. EDT, Richard Levin, not individually but as Chapter 11 Trustee (the “**Trustee**”) for the above-captioned debtors (the “Debtors”), will present the *Application for Issuance of a Letter of Request for Judicial Assistance in Service of Process* (the “**Application**”), a true and complete copy of which is annexed hereto, to the Honorable Sean H. Lane, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Courtroom 701, New York, New York 10004-1408.

Objections, if any, to the Application must be made in writing and conform with the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules, and be filed with the Clerk of the Bankruptcy Court at the address set forth above, with a copy delivered directly to the Hon. Sean H. Lane’s chambers, and served upon all required parties, so as to be filed and actually received by all of them not later than April 12, 2019 at 12:00 p.m. EDT. If no timely, written objections are filed and received in accordance with the foregoing, the Court may grant the Application without further notice or hearing.

Dated: April 5, 2019
New York, New York

Respectfully submitted,

JENNER & BLOCK LLP

By: /s/ Vincent E. Lazar
Vincent E. Lazar
Angela Allen (*pro hac vice* pending)
353 North Clark Street
Chicago, Illinois 60654
(312) 222-9350
vlazar@jenner.com
aallen@jenner.com

Carl Wedoff
Nicolas Keller
919 Third Avenue
New York, New York 10022
(212) 891-1600
cwedoff@jenner.com
nkeller@jenner.com

Counsel for the Chapter 11 Trustee

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Adv. Proc. No. 19-1102 (SHL)

**CHAPTER 11 TRUSTEE'S APPLICATION FOR ISSUANCE OF A
LETTER OF REQUEST FOR JUDICIAL ASSISTANCE IN SERVICE OF PROCESS**

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Firestar Diamond, Inc. (2729), Fantasy, Inc. (1673), and Old AJ, Inc. f/k/a A. Jaffe, Inc. (4756).

Richard Levin, not individually but solely as chapter 11 trustee (the “**Trustee**”) for the above-captioned Debtors, submits this application (“**Application**”) for the issuance of a Letter of Request (“**Letter of Request**”) to the Senior Master of the Royal Courts of Justice of the United Kingdom for judicial assistance with service of the *Complaint Against Insiders* [Adv. Dkt. 1], *Summons and Notice of Pretrial Conference in an Adversary Proceeding* (“**Summons**”) [Adv. Dkt. 4], and *Motion to Approve Order Regarding Nirav Deepak Modi’s Time to Respond to the Complaint* [Adv. Dkt. 5] (the “**Rule 7012(a) Motion**,” and together with the Complaint and Summons, the “**Judicial Documents**”).

This Application is made under 11 U.S.C. § 105(a), Rule 7004(a)(1) of the Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rules**”), and Rule 4(f)(1) of the Federal Rules of Civil Procedure (“**Civil Rules**”). Service will be effected in accordance with Article 10(b) of the Hague Service Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents (the “**Hague Service Convention**”), to which the United States and the United Kingdom are signatories.

In support of the Application, the Trustee respectfully states:

JURISDICTION & VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The Application is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) in which the Court may constitutionally enter a final order, and the Trustee consents to the entry of a final order by the Court.

BACKGROUND

4. On February 26, 2018, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing these chapter 11 cases. On June 14, 2018, the Court entered an order approving the appointment of the Trustee. [Dkt. 227.]

5. Before the date of the filing of the chapter 11 petitions, each of the Debtors conducted business as wholesalers of fine jewelry. The Trustee is now managing the Debtors' estates to maximize recoveries for the Debtors' creditors.

6. On March 27, 2019, the Trustee filed this action to recover damages the Debtors and their estates suffered as a result of the six-year, extensive international fraud, money laundering, and embezzlement scheme orchestrated by Defendant Nirav Deepak Modi ("**Modi**"), the former indirect controlling majority shareholder and *de facto* director, officer, or controlling person of the Debtors; Mihir Bhansali ("**Bhansali**"), who served as the Debtors' sole director and as the Chief Executive Officer ("**CEO**") of each Debtor; and Ajay Gandhi ("**Gandhi**"), who served as the Chief Financial Officer ("**CFO**") of each Debtor.

7. On March 28, 2019, the Clerk of the Bankruptcy Court issued the Summons under Bankruptcy Rule 7004(e). The same day, the Trustee filed the Rule 7012(a) Motion, seeking to extend Modi's time to answer the Complaint until 30 days after service of the Complaint and Summons.

8. On April 2, 2019, the Trustee served the Complaint and Summons upon Defendants Bhansali and Gandhi via first-class mail in accordance with Bankruptcy Rule 7004(b)(1).

9. The Trustee has not yet served the Complaint and Summons on Modi. On or about March 12, 2019, the Indian government issued an extradition request to the government of the United Kingdom on the basis of an arrest warrant issued against Modi by an Indian Court. In

response to that request, Modi was arrested in London on or about March 20, 2019 and is currently remanded in custody in England.

RELIEF REQUESTED AND BASIS FOR RELIEF

10. In accordance with Bankruptcy Code section 105(a), Civil Rule 4(f)(1) (made applicable in this adversary proceeding by Bankruptcy Rule 7004(a)(1)), and Article 10(b) of the Hague Service Convention, the Trustee requests the Court issue the Letter of Request to the Senior Master of the Royal Courts of Justice of the United Kingdom ("**Senior Master**"), substantially in the form attached hereto as Exhibit A, for judicial assistance in service of process of the Judicial Documents on Nirav Deepak Modi.

11. Civil Rule 4(f)(1) provides that an individual may be served outside any judicial district of the United States "by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents." Fed. R. Civ. P. 7004(a)(1). Because the United States and United Kingdom are signatories to the Hague Service Convention, compliance with the convention is mandatory. *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 705 (1988).

12. Article 10(b) of the Hague Service Convention provides that absent an objection of the destination State, the convention shall not interfere with "the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination."

13. The United Kingdom issued a declaration in connection with its adoption of Article 10(b) and permits service of foreign process "only by the central or additional authorities and only from judicial, consular, or diplomatic officers of other Contracting States." Declarations

of the United Kingdom, Hague Service Convention (“**U.K. Declarations**”) ¶ d, <https://bit.ly/2r1tJ1Q> (last visited Apr. 4, 2019); *Koehler v. Dodwell*, 152 F.3d 304, 307 (4th Cir. 1998) (quoting U.K. Declarations); *In re Am. Int’l Grp., Inc. Sec. Litig.*, 240 F.R.D. 608, 609 (S.D.N.Y. 2007) (same).

14. The Senior Master is the central authority responsible for service of foreign process in the United Kingdom. Rule 6.48 of the Civil Procedure Rules of the United Kingdom (“**U.K. Rules**”) “specifically requires a Senior Master to serve a foreign document and specify the method of service upon a defendant.” *Brown-Thomas v. Hynie*, No. 1:18-CV-02191-JMC, 2019 WL 465723, at *7 (D.S.C. Feb. 6, 2019) (citing U.K. Rules 6.48, 6.50).

15. The requirements for service through or by the Senior Master are set forth in U.K. Rule 6.50, which provides:

The Senior Master will serve a document to which this Section applies upon receipt of –

(a) a written request for service –

(i) where the foreign court or tribunal is in a convention country, from a consular or other authority of that country;
or

(ii) from the Secretary of State for Foreign and Commonwealth Affairs, with a recommendation that service should be effected;

(b) a translation of that request into English;

(c) two copies of the document to be served; and

(d) unless the foreign court or tribunal certifies that the person to be served understands the language of the document, two copies of a translation of it into English.

Miramontes v. Mills, No. 11-cv-8603, 2014 WL 12738922, at *5 (C.D. Cal. June 25, 2014) (quoting U.K. Rule 6.50).

16. The Senior Master may serve U.S. process received from U.S. judicial officers. *See* U.K. Declarations ¶ d; *Koehler*, 152 F.3d at 307 (quoting U.K. Declarations); *Am. Int'l Grp.*, 240 F.R.D. at 609 (same).

17. The Letter of Request asks the Senior Master to effect service of the Judicial Documents on Modi at Her Majesty's Prison Wandsworth, where Modi is currently remanded in custody, or wherever Modi may be located. Issuance of the Letter of Request is necessary for the just and proper disposal of the proceedings before this Court, would facilitate a determination of Modi's liability to the Debtors' estates, and make recoveries available for the benefit of all creditors. Moreover, such service furthers the purposes of the Hague Service Convention: it simplifies and expedites the service of documents abroad and guarantees that service will be brought to the notice of Modi in sufficient time for him to defend the claims. *See* Gary A. Magnarini, *Service of Process Abroad Under the Hague Convention*, 71 Marq. L. Rev. 649, 664-65 (1988).

18. For the above reasons, the Trustee believes that the Proposed Letter of Request is just and appropriate and respectfully requests that the Court issue such Letter of Request to the indicated Judicial Authority.

Notice

19. The Trustee intends to serve this Application on Modi together with the Judicial Documents in accordance with the Hague Service Convention and is providing a copy of this Application to Modi's counsel via email. The Trustee submits that no other or further notice need be given.

WHEREFORE, the Trustee respectfully requests that this Court issue a Letter of Request, substantially in the form of the proposed order attached as Exhibit A.

Dated: April 5, 2019
New York, New York

Respectfully submitted,

JENNER & BLOCK LLP

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